

HOUSE No. 1383

By Mr. Kulik of Worthington, petition of Ellen Story and others for legislation to establish conservation incentives for private landowners in the Commonwealth. Environment, Natural Resources and Agriculture.

The Commonwealth of Massachusetts

PETITION OF:

Ellen Story	Gale D. Candaras
Geoffrey D. Hall	Paul Kujawski
George N. Peterson, Jr.	Richard T. Moore
Michael E. Festa	William M. Straus
Robert P. Spellane	Michael J. Rodrigues
Jennifer M. Callahan	John W. Scibak
Viriato Manuel deMacedo	Anne M. Gobi
Harriett L. Stanley	Michael F. Rush
Pamela P. Resor	Stephen Kulik
J. James Marzilli, Jr.	Bradley H. Jones, Jr.
Douglas W. Petersen	Thomas J. O'Brien
Robert S. Creedon	Walter F. Timilty
Eric Turkington	

In the Year Two Thousand and Five.

AN ACT RELATIVE TO ESTABLISHING MASSACHUSETTS LAND CONSERVATION INCENTIVES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. This Act shall be known as the "Massachusetts
2 Land Conservation Incentives Act."

1 SECTION 2. Purpose and Findings.

2 (a) The Legislature finds that the Commonwealth of Massa-
3 chusetts' unique natural resources, wildlife habitats, open spaces,

4 agricultural resources, and historic resources are of significant
5 benefit to the Commonwealth and the public; and

6 (b) The Legislature finds that the Commonwealth of Massa-
7 chusetts' unique natural resources and distinctive natural heritage
8 including habitat for plants, animals and natural communities, are
9 being lost at an alarming rate; and

10 (c) The Legislature finds that much of the Commonwealth of
11 Massachusetts' unique natural and historical resources and habi-
12 tats are found on lands which are privately owned; and

13 (d) The Legislature desires to encourage private landowners
14 to be stewards of lands which are important habitat or designated
15 natural areas or which contain significant natural, open space, and
16 historic resources; and

17 (e) The Legislature desires to complement existing land con-
18 servation restriction programs under the Massachusetts Conserva-
19 tion Restriction Act, as set forth in Sections 31-33 of Chapter 184
20 of the Massachusetts General Laws, and not duplicate them and
21 thereby preserve public financial resources and leverage public
22 expenditures; and

23 (f) The Legislature desires to provide private landowners with
24 incentives to encourage protection of private lands for open space,
25 natural resources, biodiversity conservation, and outdoor recre-
26 ation, agricultural preservation, historic preservation and land
27 preservation purposes.

1 SECTION 3. Definitions.

2 The following definitions shall apply to this Act:

3 (a) "Interest in real property," shall mean any right in real
4 property, or improvements thereto, or water including but not lim-
5 ited to a fee simple, easement, partial interest, mineral right,
6 remainder, future interest, lease, license or covenant of any sort,
7 or other interest or right concerning the use of or power to transfer
8 property.

9 (b) "Land" or "lands" shall mean real property, with or
10 without improvements thereon; right of way, water and riparian
11 rights; easements; privileges and all other rights or interests of any
12 land or description in, relating to or connected with real property.

13 (c) "Public or Private Conservation Agency" shall mean any
14 Massachusetts governmental body, or any private not-for-profit

15 charitable corporation or trust authorized to do business in the
16 Commonwealth of Massachusetts and organized and operated for
17 natural resources, land conservation or historic preservation pur-
18 poses, and having tax-exempt status as a public charity under the
19 United States Internal Revenue Code of 1986, as amended, and
20 having the power to acquire, hold and maintain land and/or inter-
21 ests in land for such purposes.

1 SECTION 4. Tax Credit Available.

2 Section 6 of Chapter 62 of the General Laws is hereby
3 amended by adding the following new subsection:—

4 (l) Land Conveyed for Conservation and Preservation Pur-
5 poses. There shall be allowed as a credit against the tax liability
6 imposed by this chapter, an amount equal to fifty percent of the
7 fair market value of any land or interest in land located in Massa-
8 chusetts which is conveyed for the purpose of open space, natural
9 resource, and/or biodiversity conservation, or land, agricultural,
10 watershed and/or historic preservation, as an unconditional dona-
11 tion in perpetuity by the landowner/taxpayer to a public or private
12 conservation agency eligible to hold such land and interests
13 therein for conservation or preservation purposes. The fair market
14 value of qualified donations made under this section shall be sub-
15 stantiated by a “qualified appraisal” prepared by a “qualified
16 appraisal,” as those terms are defined under applicable Federal
17 law and regulations governing charitable contributions.

18 (1) The amount of the credit that may be claimed by a tax-
19 payer shall not exceed fifty thousand dollars. In addition, in any
20 one tax year the credit used may not exceed the amount of indi-
21 vidual or corporate income tax otherwise due. Any portion of the
22 credit which is unused in any one tax year may be carried over for
23 a maximum of five consecutive tax years following the tax year in
24 which the credit originated until fully expended.

25 (2) Qualified donations shall include the conveyance in pepe-
26 tuity of a fee interest in real property or a less-than-fee interest in
27 real property, such as a conservation restriction, preservation
28 restriction, agricultural preservation restriction, or watershed
29 restriction pursuant to Sections 31 through 33 of Chapter 184 of
30 the General Laws. Dedications of land for open space for the pur-
31 pose of fulfilling density requirements to obtain subdivision or

32 building permits shall not be considered as qualified donations
33 under the Massachusetts Land Conservation Incentives Act.

34 (3) Qualified donations shall be eligible for the tax credit
35 herein described if such donations are made to the Commonwealth
36 of Massachusetts, an instrumentality thereof, or a charitable orga-
37 nization described in Section 501(c) of the United States Internal
38 Revenue Code of 1986 and which:

39 (a) meets the requirements of Section 509(a)(2); or

40 (b) meets the requirements of Section 509(a)(3) and is con-
41 trolled by an organization described in Section 509(a)(2).

42 (4) To be eligible for treatment as qualified donations under
43 this Section, land or interests in lands, must be certified by the
44 Secretary of the Executive Office of Environmental Affairs or the
45 Director of the Massachusetts Historical Commission as fulfilling
46 the purposes as set forth in Section 2 of the Massachusetts Land
47 Conservation Incentives Act. The use and protection of such
48 lands, or interests therein, for open space, natural area protection,
49 biodiversity habitat conservation, land preservation, agricultural
50 preservation, historic preservation or similar use and purpose shall
51 be assured in perpetuity.

52 The following definitions shall apply to this Section:—

53 (1) “Interest in real property” shall mean any right in real
54 property, or improvements thereto, or water including but not lim-
55 ited to a fee simple, easement, partial interest, mineral right,
56 remainder, future interest, lease, license or covenant of any sort,
57 or other interest or right concerning the use of power to transfer
58 property.

59 (2) “Land” or “lands” shall mean real property, with or
60 without improvements thereon; right of way, water and riparian
61 rights; easements; privileges and all other rights or interests of any
62 land or description in, relating to or connected with real property.

63 (3) “Public or Private Conservation Agency” shall mean any
64 Massachusetts governmental body, or any private not-for-profit
65 charitable corporation or trust authorized to do business in the
66 Commonwealth of Massachusetts and organized and operated for
67 natural resources, land conservation or historic preservation pur-
68 poses, and having tax-exempt status as a public charity under the
69 United States Internal Revenue Code of 1986, as amended, and

70 having the power to acquire, hold and maintain land and/or inter-
71 ests in land for such purposes.

1 SECTION 5. Administration.

2 (a) The Secretary of the Executive Office of Environmental
3 Affairs, hereinafter referred to as the Secretary, and the Director
4 of the Massachusetts Historical Commission, hereinafter referred
5 to as the Director, may promulgate such rules and regulations as
6 may be deemed necessary to certify eligible projects for treatment
7 in fulfillment of the purposes of this Act. The Secretary and the
8 Director, upon the five year anniversary of the enactment of this
9 Act or any renewals thereof shall prepare a report to the Legisla-
10 ture showing the lands protected during such period pursuant to
11 this Act.

12 (b) The Department of Revenue and the Executive Office of
13 Administration and Finance, in consultation with the Secretary
14 and the Director, shall promulgate such rules and regulations as
15 may be deemed necessary to administer the tax incentives pro-
16 vided for in this Act and shall co-ordinate with the agencies refer-
17 enced in subsection (a) above in the preparation of the report(s) to
18 the Legislature showing the fiscal impact on the Massachusetts
19 Treasury of the credits claimed pursuant to this Act.

1 SECTION 6. Applicability, Fiscal Limitation and Renewal.

2 (a) The tax credits provided by this Act shall apply to trans-
3 fers of land or interests therein in taxable years beginning on or
4 after January 1, 2002 and all taxable years thereafter.

5 (b) Any taxpayer claiming a tax credit under this Act may not
6 claim a credit under any similar law of the Commonwealth for
7 costs related to the same project. A taxpayer may not claim a tax
8 credit under this Act for lands or interests in land, a portion of
9 which constitutes the taxpayer's entire holdings and where the
10 taxpayer has sold or has contracted to sell to the Commonwealth,
11 an instrumentality thereof, or a private conservation agency the
12 balance of such lands or interests in land for open space, biodiver-
13 sity, land conservation or land preservation purposes.

14 (c) Any tax credits which arise under this Act from the dona-
15 tion of land or an interest in land made by a pass-through tax
16 entity such as a trust, estate, partnership, limited liability corpora-

17 tion or partnership, limited partnership, subchapter S corporation
18 or other fiduciary shall be used either by such entity in the event it
19 is the taxpayer on behalf of such entity or by the member, man-
20 ager, partner, shareholder and/or beneficiary, as the case may be,
21 in proportion to their interest in such entity in the event that
22 income, deductions and tax liability passes through such entity to
23 such member, manager, partner, shareholder and/or beneficiary.
24 Such tax credits may not be claimed by both the entity and the
25 member, manager, partner, shareholder and/or beneficiary for the
26 same donation.

1 SECTION 7. Construction.

2 No part of this segment of this Act shall be interpreted to in-
3 any way alter or amend any permit requirements, reporting
4 requirements, allocation procedures, or other requirements set
5 forth in any other provision of state law.